

HNBA
HISPANIC NATIONAL BAR ASSOCIATION
HNBA
The National Voice of the Hispanic Legal Community

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National President

October 17, 2006

Via Facsimile Transmission: 202-418-2801

The Honorable Kevin J. Martin
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Implementation of Section 304 of the Telecommunications Act of 1996,
Commercial Availability of Navigation Devices, CS Docket No. 97-80,
Second Report & Order

Dear Chairman Martin and Commissioners:

This letter is written on behalf of the Hispanic National Bar Association (HNBA), a U.S. legal association. The purpose of the letter is to urge the Commission to grant the pending waiver requests of the so-called set top box integration ban.¹

The HNBA represents the interests of over 33,000 U.S. Hispanic attorneys, judges, law professors, and law students from throughout the United States. In addition to assisting in the growth and professional development of the Hispanic legal professionals, the HNBA mission focuses on addressing legal issues that affect the U.S. Hispanic community.

The HNBA has a vested interest in examining and addressing U.S. regulations and laws involving information technology issues, in particular those issues that impede, or advance, the Hispanic community's access to the benefits afforded by educational information and the benefits afforded by advanced information technologies. Given their importance, the HNBA has addressed such issues in continuing legal education conferences, and before the U.S. Congress and Administration.

In brief, we believe that failure to waive the July 1, 2007, implementation date of the integration ban will have an adverse effect on the Hispanic community. First, we understand that the integration ban will raise the overall costs for cable service providers by \$600 million dollars, an amount that will be passed down to the consumers. Since many Americans are unable to afford cable services, this result will place the education and information benefits afforded by cable television beyond the reach of the poorest of our citizens. This result is simply unacceptable. Second, the integration ban puts at risk imminent deployment of innovative digital cable programming that would benefit minority communities. The Commission's preeminent objective in its consideration of the pending waiver requests should be to enhance, not restrict or impede the access of underserved communities to this type of programming.

¹ Communications Act of 1934 § 629 (c), 47 U.S.C. § 549 (c) ("the Act").

The Commission has authority under Section 629(c) of the Act to waive its navigation device rules upon a showing that “such waiver is necessary to assist the development or introduction of a new or improved multichannel video programming”² The Commission has exercised this authority in the last two years in order to facilitate the deployment of digital services and reduce costs for consumers. In 2004, the Commission granted BellSouth a waiver on grounds that a waiver would “assist the development or introduction of a new or improved multichannel video programming service.”³ In that matter, BellSouth argued that the absence of a waiver would obligate it to deploy 65,000 new set top boxes.⁴ Here, the record before the Commission contains uncontroverted evidence that demonstrates that a waiver denial will cause multichannel video providers to deploy at least 8 million new cable set top boxes, costing consumers over \$600 million per year. Consequently, the record in this instance is more compelling than the record that was before the Commission in the BellSouth matter.

In addition, the record before the Commission demonstrates a compelling case that downloadable security, an innovative new technology that cable companies are rapidly preparing for deployment, will bring numerous consumer benefits, including expanded minority-oriented programming. The deployment of this technology is at risk if the integration ban is not waived. This precisely is the type of risk that Congress warned the Commission to be vigilant in the implementation of Section 629 of the Act, to “avoid actions which would have the effect of freezing or chilling the development of new technologies and services.”⁵ In this regard, the Commission recognized that “regulations have the potential to stifle growth, innovation and technical developments at a time when consumer demands, business plans, and technologies remain unknown, unformed or incomplete.”⁶

The Commission has concluded that “the development of set-top boxes and other devices utilizing downloadable security is likely to facilitate a competitive navigation device market, aid in the interoperability of a variety of digital devices, and thereby further the DTV transition . . . without the potentially costly physical separation of the conditional access element.”⁷ This conclusion is clearly supported by the record before the Commission in this present matter.

In conclusion, the failure to grant a waiver of the integration ban would raise consumer costs, reduce access to cable programming, and impede the development and deployment of promising new technologies that would result in low-cost and diverse video programming. Such consequences would have a deep, adverse effect on the poorest of Americans. The Commission should exercise its authority and grant the pending waivers and thereby advance Congressional intent, uphold established Commission precedent and practice, and recognize the public interest for low-cost technologically advanced cable programming services and programming.

² 47 U.S.C. § 549 (c).

³ BellSouth Interactive Media Services, LLC and BellSouth Entertainment, LLC Petition for Permanent Relief, 15 FCC Rcd 15607, ¶ 8 (2004).

⁴ *Id.* at ¶ 6.

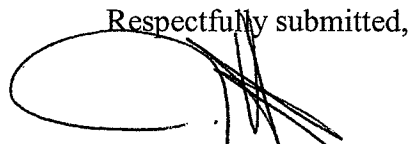
⁵ Joint Explanatory Statement of the Committee of Conference, S. Conf. Rep. 104-230, 104th Cong., 2d Sess. at 181 (1996).

⁶ Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices, Report and Order, 13 FCC Rcd. 14775, at ¶ 15 (1998).

⁷ Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices, Second Report and Order, 20 FCC Rcd. 6794, at ¶ 3 (2005).

We stand ready to answer any questions concerning this submission and to provide further information as necessary. You may reach the undersigned through the HNBA National Office, or directly at 202-833-9200. Thank you for the opportunity to address this important issue.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jimmie V. Reyna", is written over a large, empty oval shape that serves as a placeholder for a stamp or seal.

Jimmie V. Reyna, Esq.
HNBA National President

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cc: HNBA National Office
HNBA Board of Governors